CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 31.05.2017

Excise Appeal No. 51995 of 2014

(Arising out of order in appeal No. 204 (OPD) CE JPR-II 2013 dated 30.12.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur).

M/s Consolidated Construction Consortium Limited Appellant
Sh. Pradeep Jain, C. A. for the appellant

Vs.

CCE, Jaipur Respondent
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 53651 / 2017

Per: **Ashok K. Arya**:

M/s Consolidated Construction Consortium Limited is in appeal against order in appeal No. 204 (OPD) CE JPR-II 2013 dated 30.12.2013 whereunder inter-alia the appellant has been denied the benefit of Notification No. 4/2006-CE dated 01.03.2006 and duty of Central Excise alongwith equivalent penalty has been confirmed.

2. The brief facts of the case are that the appellant is manufacturing ready mix concrete falling under Chapter 38 of the Central Excise Tariff The appellant has been denied the benefit of Notification No. 4/2006-CE (supra) for concrete mix.

3. After having carefully considered the facts of the case and the submissions of both sides represented by Sh. Pradeep Jain, Ld. C.A. for the appellant and Sh. H. C. Saini, ld. AR for the Revenue it appears that the matter is covered by the Tribunal decision in appellant's own case reported as ***2017 (347) ELT 295 (Tri. Del.)***. The Tribunal in the said case observed as under:

> "2. *We have heard ld. AR for the Revenue. None appeared on behalf of the respondent. A letter dated 15.10.2016 was received from the Counsel seeking adjournment. However, we have examined the appeal papers with the help of ld. AR. We note that the impugned order recorded the following factual findings:*
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> > *"Therefore, merely using a different name for the same product cannot result in a different product thereby leading to denial of exemption to which the appellant are lawfully entitled and Notification No. 4/2006-CE dated 1.3.2006 having referred to the concrete mix as filling under Chapter Heading 38 of the Central Excise Tariff Act it is but necessary to treat the said entry as only referring to the RMC since Concrete Mix if left unused would harden and particularly in the absence of any other entry in the said chapter referring to the Concrete mix, as otherwise notification No. 4/2006-CE would be rendered in fructuous or meaningless which is not permissible under law as has been laid in a plethora of judgments of the courts and tribunals. The batching plant of the appellant is located within the site of construction and the RMC manufactured therein is being utilised for the said ONGC project only and they appeared to have fully complied with the requirement of notification No. 4/2006-CE dated 1.03.2006 (S. No. 74). It is submitted that it is by well settled position of law that when two notifications are in force, it is purely the option of the assessee to choose the one beneficial to him".*
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> *3. Further, the Commissioner (Appeals) relied on the Board's Circular dated 18.5.1999 to hold that the expression "site" may not be given restrictive meaning and shall include in premises made available to the manufacturer of goods falling under Heading 68.07 by mention in the contract. It was observed that RMC Plant was set up for specific purpose in the vicinity of construction site. As such, there can be no denial of exemption to the respondent. We note that the Revenue is emphasizing a difference between "Concrete Mix" and "Ready Mix Concrete" on the ground that they have different IS Standards. It was contended that these two are different products and the exemption given to "concrete mix" cannot be extended to "ready mix concrete". We find that in the absence of material evidence to support the contention of the Revenue, the existence of different IS Standards of CETA Heading is not sufficient enough to deny the exemption. The exemption notification refers to*

> *"concrete mix" falling under Chapter 38 and not restricted to a specific sub-heading of the Chapter. We find that there is nothing in the present appeal to persuade us to interfere with the findings recorded in the impugned order. Accordingly, the appeals by Revenue are dismissed*".

4. Considering the Tribunal decision (supra) and its observations referred above, the impugned order is set aside and appeal allowed with consequential relief, if any, to the appellant.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

Pant